IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 291 OF 1988.

The Commissioner of Income-tax. ... Applicant.

V/s.

Maharashtra State Finance. ... Respondent.

Parag Vyas for the applicant.

P.J.Pardiwala i/b. Mulla & Mulla & C.B.C.
for the respondent.

CORAM : V.C.DAGA AND A.S.AGUIAR, JJ.

DATED : 30th June 2005.

P.C. :

. This reference relates to two assessment years i.e. 1977-78 and 1978-79). By this reference under section 256 of the Income-tax Act, 1961 ("Act" for short), the Income Tax Appellate Tribunal has referred the following questions of law, for the opinion of this Court:

In respect of assessment years 1977-78 and 1978-79:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law and on facts in holding that the interest credited to "Interest Suspense Account" was not liable to inclusion in the total income of the assessee having regard to the provision of section 28 and section 145 of the Income-tax Act, 1961?

In respect of assessment year 1978-79:

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the statutory deduction under section 36(1)(viii) of the Income-tax Act, 1961 in respect of a financial corporation has to be calculated on the total income of the assessee before deduction of the reserve and not after such deduction?

2. Learned counsel for the parties agreed that in view of the decision of the Apex Court in the case of **UCO Bank v. C.I.T.**, (1999) 237 ITR 889, question No.1 has to be answered in the affirmative i.e. in favour of the assessee and against the revenue.

3. They further agreed that in view of decision of the Apex Court in the case of **C.I.T. v. A.P.State Finl.Corporation**, (1998) 233 ITR 195, question No.2 has to answered in the affirmative i.e. in favour of the assessee and against the revenue.

4. We answer both the questions accordingly. Reference stands disposed of with no order as to costs.

(A.S.AGUIAR, J.) **(V.C.DAGA, J.)**